



Billing Code 3720-58

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Implementation of Executive Orders on Floodplain Management and Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice.

SUMMARY: The U.S. Army Corps of Engineers (USACE) has developed draft internal agency implementation guidance for the Executive Order on Floodplain Management to incorporate the new requirements of the Executive Order on Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input . USACE is seeking feedback from partners, other government and non-government stakeholders, Tribes, and members of the general public on the proposed draft guidance that has been developed.

DATES: Comments must be submitted on or before 30 January 2017.

ADDRESSES:

E-mail: **USACE-EO11988@usace.army.mil** and include “Implementation Comments”, in the subject line of the message.

Mail: HQ, U.S. Army Corps of Engineers, ATTN: EO13690/CECW-HS/3G68, 441 G Street NW, Washington DC 20314-1000.

Hand Delivery / Courier: Due to security requirements, we cannot receive

comments by hand delivery or courier.

FOR FURTHER INFORMATION CONTACT: Dr. Stephanie Bray, Headquarters,  
Office of Homeland Security, Washington, D.C. at 202-761-4827.

SUPPLEMENTARY INFORMATION: Executive Order 11988, Floodplain

Management, was issued in 1977 and directed agencies to avoid to the extent possible the long and short-term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct and indirect support of floodplain development wherever there is a practicable alternative. EO 11988 applied to Federal agencies carrying out its responsibilities for:

- Acquiring, managing, and disposing of federal lands and facilities;
- Providing federally-undertaken, financed, or assisted construction and improvements;
- Conducting federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulation, and licensing activities.

It required agencies performing federal actions in the base floodplain (floodplain associated with the 1 percent annual chance (also known as 1 percent annual exceedance probability) flood) to do the following:

1. Determine if a proposed action is in the base floodplain (that area which has a one percent or greater chance of flooding in any given year).
2. Conduct early public review, including public notice.

3. Identify and evaluate practicable alternatives to locating in the base floodplain, including alternative sites outside of the floodplain.
4. Identify impacts of the proposed action.
5. If impacts cannot be avoided, develop measures to minimize the impacts and restore and preserve the floodplain, as appropriate.
6. Reevaluate alternatives.
7. Present the findings and a public explanation.
8. Implement the action.

Following issuance of EO 11988 and the corresponding interagency Implementing Guidelines, USACE developed Engineering Regulation (ER) 1165-2-26 for interpreting and implementing the requirements of EO 11988. The regulation applies to all field operating activities having Civil Works responsibilities, with the exception of the Regulatory Program which implements EO 11988 through its regulations. Section 14 of ER 1165-2-26 explains how EO 11988 applies to specific Civil Works programs.

On January 30, 2015, the White House issued Executive Order 13690 – Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Public Input. EO 13690 and the Federal Flood Risk Management Standard (FFRMS), implemented through guidelines established by the Water Resources Council (“Implementing Guidelines”), updated EO 11988 to include the following:

- Requires the use of an expanded floodplain for some actions that are federal investments.
- Requires that the elevation and horizontal extent of the expanded floodplain be determined using one of three approaches: the climate-informed science approach, the freeboard value approach, and the 500-year flood elevation approach.
- Requires agencies to use natural and nature based approaches, where possible.
- Establishes higher standards for critical actions.

USACE established a Product Development Team (PDT) to investigate what impacts EO 13690 and the FFRMS would have on its policies and programs and, in particular, to develop revised implementation guidance for EO 11988, as amended. A draft Engineer Circular (EC) that will ultimately rescind ER 1165-2-26 has been developed to provide overarching guidance for the implementation of EO 11988, as amended. The EC will expire two years from issuance, which will provide USACE time to evaluate the guidance provided, consider initial implementation experience to identify any necessary clarifications or changes, and incorporate any changes introduced by the reassessment of the FFRMS required by EO 13690. After two years, the EC will either be revised and reissued or converted to an ER, which does not expire and is more permanent agency guidance.

The draft EC is intended to provide overarching guidance to all USACE Civil Works mission areas. As such, it does not provide extensive detail about how the requirements will be implemented within specific program areas or activities; instead it establishes intended implementation principles that will be clarified in greater detail in individual

program specific guidance documents, to be developed or revised at a later date.

Generally, the new requirements will be incorporated into specific guidance documents as they are updated through the agency's regular process and schedule, unless a new guidance document needs to be prepared to address some aspect of implementation of the requirements. USACE now invites review and comment from our partners and stakeholders on the proposed implementation guidance contained within the draft EC.

#### *Instructions for Providing Comments Online*

USACE is requesting assistance in the form of data, comments, literature references, or field experiences, to help clarify the policy requirements for implementing EO 11988 and EO 13690 for agency activities. The draft EC is available for review on the USACE EO 13690 Implementation website (<http://www.iwr.usace.army.mil/Missions/FloodRiskManagement/FloodRiskManagementProgram/AbouttheProgram/PolicyandGuidance/FederalFloodRiskManagementStandard.aspx>). An Executive Summary of the draft EC is also available on the website to provide a high-level overview of the document and summary of the more substantial changes since the original 1984 ER. Additionally, a list of topics and issues for which feedback would be especially helpful is posted for reviewer's consideration. While USACE welcomes any and all feedback on the draft EC, feedback responding to the list of identified topics and issues will be particularly helpful to USACE in clarifying areas requiring new policy or practice. The most useful comments are from specific experiences and case examples. Commenters should use their knowledge of working with USACE on various types of federal actions as well as their understanding of EO 11988 and EO 13690. When comments are being made on specific sections of the

document, USACE requests that commenters identify the relevant page and line numbers to which the comment applies.

All comments, literature citations, experiential references, data, other relevant reports, and input in response to the guiding topics and issues are being accepted through email, or through the postal service. All comments submitted by the date identified above will be compiled and sent to the PDT for their consideration.

*Future Actions*

Feedback and comments provided in response to this notice will be considered and the draft EC will be updated as appropriate. When the final EC is published, a notice will be placed in the Federal Register and on the USACE EO 13690 Implementation website, and the document itself will be made available through the USACE publications website (<http://www.publications.usace.army.mil/>).

Dated: December 12, 2016.

APPROVED \_\_\_\_\_

Karen Durham-Aguilera

Director of Contingency Operations

and Homeland Security

[FR Doc. 2016-30240 Filed: 12/15/2016 8:45 am; Publication Date: 12/16/2016]